

# Risk Management



## TO REPORT OR NOT TO REPORT

by Denita Neal, JD

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This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. ([www.prms.com](http://www.prms.com)), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney.

**QUESTION:** An elderly female patient's family member expressed concern about the patient's driving ability. The patient admitted to a recent fender bender and to one occasion where she became confused, took the wrong exit, and ended up arriving at her destination over an hour late. The accounts of both the patient and her family members seem plausible. How do I determine whether to recommend to the Department of Motor Vehicles that this patient's driving privileges be suspended? Would reporting be considered a violation of confidentiality? What is my liability risk if the patient seriously harms herself or someone else?

**ANSWER:** As a general rule, physicians are not held liable for the actions of their patients except in cases of serious, imminent harm to an identifiable victim(s), in which case most states require the physician to take some form of action to warn or otherwise protect the patient and the potential victim(s). However, with regard to patients who are or may be impaired drivers, the obligation to take action becomes less clear cut.

In one specific instance, the duty to report is clear. If you see your obviously impaired patient drive away, despite your best efforts to make other arrangements for him or her to leave your office, then you may alert the authorities in the interest of public safety, remembering, of course, to disclose only the minimum information necessary.

Episodes as straightforward as a severely impaired patient leaving your office rarely occur; however, your question presents a more likely scenario, which generates uncertainty and creates conflict between the duty to maintain patient confidentiality versus legal/ethical duties to protect patients and third parties.

Accordingly, and in keeping with risk management's primary and secondary goals of providing appropriate patient care and minimizing potential malpractice liability, the following list of suggestions can be useful when deciding how to manage the reporting of gray areas.

**Advising, educating, and/or warning the patient regarding his or her possible driving impairment goes hand-in-hand with your clinical assessment and is an extension of the informed consent to the treatment process.**

### **CLINICALLY ASSESS THE IMPAIRMENT**

As the treating psychiatrist, your first duty is to address any clinical reasons a patient might be impaired. For instance, someone in treatment for alcohol or substance abuse may warrant a referral to an intensive rehabilitation program. Perhaps an elderly patient with vision or hearing loss would need to see the appropriate specialists for possible correction of those problems. Furthermore, your clinical judgment may dictate changes in treatment approach, medications, dosages, or some combination thereof.

*The Physician's Guide to Assessing and Counseling Older Drivers*<sup>1</sup> is an excellent resource to help you assess whether a medical condition is the cause of a driving impairment. This 10-chapter guide, found on the American Medical Association's (AMA) website, offers guidance and information on a range of specific related topics from actual assessment of functional abilities to tips on managing the patient to applicable state regulations.

As always, timely and careful documentation of your clinical assessments, reasoning, and actions serves as the best tangible indicator that you have met the standard of

care should your decisions ever be challenged.

### **ADVISE/EDUCATE/WARN THE PATIENT**

Advising, educating, and/or warning the patient regarding his or her possible driving impairment goes hand-in-hand with your

clinical assessment and is an extension of the informed consent to the treatment process. Some tools at your disposal include talking to the patient about his or her feelings and concerns about driving, providing the patient with medication fact sheets, and collaborating with family members, friends, and other clinicians. Counseling the patient includes not only warning him or her about safety, but also providing information about possible adverse reactions to medication (informed consent) and about your possible duties to report.

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The AMA Council on Ethical and Judicial Affairs stresses the importance of physicians striking a balance between keeping patient confidentiality, protecting public safety, and honoring state laws in a report entitled *Impaired Drivers and Their Physicians*.<sup>2</sup>

Again, documenting your efforts and the patient's understanding and

responses is an important part of this ongoing process.

### **REPORT ACCORDING TO YOUR STATE LAW**

Physician reporting responsibilities and consequences to the physician as well as the patient vary greatly by state law. Pennsylvania (67 PA Code, Cpt. 83.6), for example, offers immunity from civil and criminal liability to physicians who make good faith reports; and the state may hold the nonreporting physician liable for any crash resulting in the death, injury, or property loss caused by the patient. Missouri (RSMo, sec. 302.291), on the other hand, permits rather than mandates physicians to report drivers who have conditions that adversely affect their ability to drive safely.

Your state may require reporting for specific diagnoses or events like seizures or it may permit reporting in good faith any condition that may affect safety on the road. Further, your state may encourage reporting by offering immunity from civil liability or anonymity during the reporting process. Chapter eight of the aforementioned *Physicians' Guide to Assessing and Counseling*

*Older Drivers* may serve as the beginning point in your quest for information on your state's rules.

Regardless of your state law, you may still be exposed to claims of breaches of confidentiality should you report a patient as an impaired driver. Therefore, you may need to seek additional guidance from your state medical association, your

malpractice liability insurance program risk manager, or personal legal counsel when deciding whether reporting is the best option for a given set of circumstances.

## RESOURCES

1. Physician's Guide to Assessing and Counseling Older Drivers. <http://www.ama-assn.org/ama/pub/category/10791.html>. Accessed November 22, 2010.
2. Impaired Drivers and Their Physicians. <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion224.shtml>. Accessed November 22, 2010.
3. Iverson DJ, Gronseth GS, Reger MA, et al. Practice parameter update: Evaluation and management of driving risk in dementia: report of the quality standards subcommittee of the

American Academy of Neurology. *Neurology*. 2010;74(16):1316–1324. Epub 2010 Apr 12.

4. Driving with Dementia: Understanding the Safety Risks. <http://www.aan.com/practice/guideline/uploads/398.pdf>. Accessed November 22, 2010.
5. Professional Risk Management Services, Inc. Informed consent: More than a piece of paper. *Rx for Risk*. 2003;11(1).

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## SUBMIT YOUR OWN QUESTION

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